

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of: |) | |
| |) | |
| City of Tacoma d/b/a Click! Network |) | CS 97-80 |
| Emergency Petition for Waiver of |) | CSR-7141-Z |
| 47 C.F.R. § 76.1204(a)(1) |) | |
| |) | |
| To: Chief, Media Bureau |) | |

Reply

The City of Tacoma d/b/a Click! Network (“the City”) replies to the comments filed by the Consumer Electronics Association (“CEA”) in this matter.¹ For the reasons set forth below, the Commission should grant the City’s *Emergency Petition for Waiver* and disregard CEA’s comments.

I. The Commission should disregard CEA’s Comments.

As CEA has conceded repeatedly in this docket, small cable operators like the City have absolutely no ability to influence the commercial market for navigation devices.² Because the only reason for the integration ban is to encourage the

¹ *Comments of the Consumer Electronics Association on Requests for Waiver Filed by C&CC, Mid-Rivers, En-Touch & Click*, CS Docket No. 97-80, CSR-7144-2, CSR-7145-Z, CSR-7183-Z, CSR-7141-Z (filed May 3, 2007) (“Comments”).

² See, e.g., *Comments of the Consumer Electronics Association on the City of San Bruno Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7116-Z (filed March 5, 2007) (“San Bruno Comments”) at 1 (smaller cable operators are “effectively at the mercy of the product decisions taken by the major MSOs and the unilateral dictates of entrenched vendors”) and at 3 (“granting a waiver to San Bruno or to all small operators similarly situated, would not change Motorola’s unilateral refusal to offer a CableCARD-reliant version of the DCT-700”). See also *Comments of the Consumer Electronics Association on Atlantic Broadband Finance, LLC’s Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, CS Docket No. 97-80, CSR-7110-Z (filed March 12, 2007) at 1; *Comments of the Consumer Electronics*

commercial market for navigation devices, CEA is effectively admitting that there is no reason to apply the integration ban to small operators like the City. In short, CEA opposes the City's *Emergency Petition for Waiver* by asserting arguments that are totally contradicted by its own admissions in this docket and factually inaccurate to boot. The Commission should recognize CEA's Comments for what they are – a thinly-veiled attempt to enrich the \$155 billion consumer electronics industry³ at the price of smaller-market consumers.

Further, the City notes that CEA's Comments were the only comments filed in opposition to the City's *Emergency Petition for Waiver*. Other commenters strongly support the City's petition.⁴

We address each of CEA's major arguments below.

1. **CEA's arguments:** "Granting waivers to small cable operators... would aggravate the very circumstances that have subjected them to the dictates of the two dominant set-top **box** vendors... The only extenuating circumstance for the Petitioners is their failure to demand compliant hardware from vendors..."⁵

These assertions by CEA are totally contradicted by CEA's earlier admissions in this docket. As CEA itself has consistently admitted, smaller cable operators like the City are "effectively at the mercy of the product decisions taken by the major MSOs and

Association on The World Company d/b/a Sunflower Broadband's Petition for Waiver of 47 C.F.R. § 76.1204(a)(1), CS Docket No. 97-80, CSR-7114-Z (filed March 12, 2007) at 1.

³ See *CEA Forecasts Consumer Electronics Revenue Will Surpass \$755 Billion in 2007*, viewed at http://www.ce.org/Press/CurrentNews/Dress_release_detail.asp?id=11220 on May 10, 2007.

⁴ See *In the Matter of Requests for Waiver of 47 C.F.R. § 1204(a)(1)*, CS Docket No. 97-80, *Comments of Motorola, Inc.* (filed May 3, 2007); *In the Matter of City of Tacoma, Emergency Petition for Waiver of 47 C.F.R. § 76.1204(a)(1)*, *Comments of American Cable Association in Support of Petition for Waiver*, CSR-7141-Z, CS Docket No. 97-80 (filed May 3, 2007).

⁵ *Comments* at 2.

the unilateral dictates of entrenched vendors,” and “granting a waiver to...all small operators similarly situated, would not change Motorola’s unilateral refusal to offer a CableCARD-reliant version of the DCT-700.”⁶ In other words, CEA itself concedes that operators like the City have no power to “aggravate the...circumstances” of the navigation device market, nor power to “demand compliant hardware” from vendors. Accordingly, CEA’s *Comments* provide absolutely no reason to deny the City’s Petition.

2. **CEA’s argument:** “Denying waivers may be the only way finally to require vendors to support separable security in a way that allows for national portability.”⁷

Again, CEA’s argument is contradicted by its own repeated admissions in this docket that granting a waiver to a small operator like the City “would not change Motorola’s unilateral refusal to offer a CableCARD-reliant version of the DCT-700...”⁸ Further, CEA’s argument ignores the fact that Motorola already supports separable security by offering at least six models of CableCARD-compatible set-top boxes, including the DCH100, DCH200, DCH3200, DCH3416, DCH6200 and DCH6416.⁹

3. **CEA’s argument:** “If small and rural operators can continue to foreclose a local market for [separable security] devices, their subscribers will continue to be effectively locked into leasing devices from the operators.”

⁶ *San Bruno Comments* at 1 and 3.

⁷ *Comments* at 2.

⁸ See, e.g., *San Bruno Comments* at 3.

⁹ See http://broadband.motorola.com/business/digitalvideo/productline_host_settops.asp (viewed May 10, 2007).

¹⁰ *Comments* at 3.

The City has hardly “foreclose[d]” the market for separable security devices – far from it. CEA is conveniently ignoring the fact that (as required by 47 C.F.R. § 76.640) the City’s network is CableCARD-compatible. Accordingly, any subscriber with a CableCARD-compatible TV can receive encrypted services without leasing a set-top box from the City. Further, it is absurd to suggest that an operator like the City, which has fewer than 25,000 subscribers, can “foreclose” the market for separable security devices.

III. **Conclusion**

CEA’s *Comments* are contradicted by its own admissions in this docket, and attempt to mislead the Commission with factual inaccuracies. At the bottom, CEA’s Comments endorse higher prices for consumers and slowing the digital transition for the City’s subscribers, because without the requested waiver, the City will be forced to abandon its digital transition due to budgetary constraints. And why? To raise the price of using an analog television set so that CEA’s members can sell more expensive digital TV sets to consumers. The Commission should recognize CEA’s comments for what they are – an attempt to transfer money from the pockets of consumers to the behemoth consumer electronics industry.

There is ample good cause for the requested waiver for the DCT-700: The City cannot finance its digital transition without the waiver. Conversely, with the waiver, the City can free up spectrum for new broadband services and provide all-digital services to all but a small number of mainly-elderly Lifeline subscribers. The City therefore respectfully requests that the Commission grant it a waiver of the integration ban for the

Motorola DCT-700 until October 31, 2008.

Respectfully submitted,



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May 11, 2007

CERTIFICATE OF SERVICE


I, Megan M. Petrulis, paralegal with the law firm of Cinnamon Mueller, certify that a true and correct copy of the *Reply of the City of Tacoma d/b/a Click! Network* was served on the following individuals by first class mail on May 1 ■, 2007:

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